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NO. 84-1399

IN THE SUPREME COURT OF

THE UNITED STATES

OCTOBER TERM, 1985

ERNEST ALLEN,

Petitioner,

v.

CITY OF KINLOCH,

Respondent.

REPLY BRIEF IN OPPOSITION TO RESPONDENT'S BRIEF

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EDITOR'S NOTE

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NO. 84-1399

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

ERNEST A[illegible]EN,

Petitioner,

vs.

THE CITY OF KINLOCH,

Respondent.

PETITIONER'S REPLY BRIEF IN OPPOSITION TO RESPONDENT'S BRIEF

Pursuant to the authority in Rule 22 and in the manner provided by Rule 33 and 34 of the Supreme Court Rules, the Petitioner,

Ernest Allen files this his reply brief in opposition to the Respondent's brief.

STATEMENT OF THE CASE

The Respondent has raised certain points that Appellant is required to deny and respond thereto. The statements in the Appellant's brief as to distortions and implications that Appellent's facts are untrue is the same methodology that it attempted to use in the jury trial. It should receive the same benefits by this Court as given by the jury.

The first red herring it throws into the case is some veiled statement of ownership of property on which the Plaintiff resided with his family since 1926. A deed was introduced and testimony by the Plaintiff (TR 1-80) and old time neighbors (TR1-118) and payment of taxes (TR1-80) as to the Plaintiff ownership and occupancy of this real property since

1924 (TR 1-69).

The City attempted on the day of trial to secure a survey, but to no avail (TR2-156). This issue was submitted to the jury by Instrument No. 5.

> "First: The defendant City of Kinloch, acting by and through its agents and employees did enter upon land occupied by Plaintiff and did tow and impound three trucks owned by Plaintiff which they had no legal right to do."

The jury found therefore this issue in Plaintiff's favor.

The second red herring in Respondent's brief is the issue of taking Petitioner's vehicles from his property without legal authority.

The City attempts now as it did before the jury to say that Petitioner's vehicles were derelict and violated a law. They didn't say and have never said what law Petitioner violated. On a notice put on

Petitioner's vehicle by the City it stated that ordinance 62 was violated. The City does not have and never had such an ordinance (TR3-30). It has no ordinance that makes it unlawful to park vehicles whether City-licensed or not on private property. As a matter of fact, such an ordinance would be illegal....City of Frankford v. Davies 348S.W.(2) 53:

> ".....the only motor vehicle license tax permissible (to be enacted by a city) is one against the owner of a motor vehicle who must be a resident of the city and who uses or operates said motor vehicle within the city....."

To store a motor vehicle on ones property is not a permissible city regulation.

Further, the City is limited to towing motor vehicles by Revised Statutes of Missouri Section 300.595 which permits towing from streets or highways and not from private

property.

The third issue raised by the Respondent is in relation to the question presented by the Petitioner in his application for a writ. The City has a convenient lapse of memory at this point and has forgotten the evidence presented by the Petitioner in the jury trial. It forgets to tell this Court that the taking of motor vehicles from Petitioner's property had occurred previously, several years before the date in this case (TR1-89). It forgets to tell the Court that after the motor vehicles in this case had been taken it attempted to again illegally take motor vehicles from Petitioner's property (TR1-100). Then Petitioner filed his suit and the vehicles were returned to him.

This suit was filed by Petitioner as a class action not only because Petitioner's motor vehicles were taken illegally, but so

were the vehicles of many other citizens. This is not a sole isolated incident in the city's operations -- it is a daily and systematic operation of illegality that continues and will continue in violation of people's constitutional rights. The only way, therefore, to stop such unconstitutional activities is to grant a Writ of Certiorari to Petitioner or reverse the decision of the Eighth Circuit Court of Appeals. Replevin is not an adequate remedy in this case for Petitioner and others. A declaration that the City's activity in this regard is abusive, illegal and a total disregard of the people's constitutional rights is needed.

To secure one's property immediately back by replevin, a bond must be posted. This would not be an adequate remedy. Why must a person post a bond to receive his property that has been illegally seized? Is this adequacy? It is submitted that to say

that replevin is an adequate remedy for a constitutional violation will be to encourage illegal and unconstitutional actions by the police.

CONCLUSION

For the reasons stated herein and in its original brief and application, Petitioner requests the Court to grant the Writ of Certiorari or in the alternative, that the replevin and order of the Court of Appeals of the Eighth Circuit, State of Missouri, be summarily reversed; or such other and further relief as to this Honorable Court may appear appropriate.

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CERTIFICATE OF SERVICE

I, Louis S. Czech, counsel of record for Ernest Allen, Petitioner, hereby certify that on the 23rd day of October, 1985, pursuant to Rule 28, Rules of the Supreme Court, I served three copies of the foregoing Brief in Opposition to Petition for a Writ or Certiorari to the United States Court of Appeals for the Eighth Circuit on Lloyd J. Jordan, 721 Olive Street, St. Louis, MO 63101.

Louis S. Czech